Fahmi bin Zainol & Ors v Jawatankuasa Tatatertib Pelajar, Universiti Malaya & Ors

HIGH COURT (SHAH ALAM) — APPLICATION FOR JUDICIAL REVIEW NO 25–17–05 OF 2015
MOHD YAZID J
21 APRIL 2017

Administrative Law — Judicial review — Application for — Applicants charged under University of Malaya (Discipline of Students) Rules 1999 ('the Rules') — Disciplinary committee found applicants guilty — Whether applicants should be represented by lawyer — Whether Rules unconstitutional — Whether disciplinary committee complied with rr 53 and 54 of the Rules — Whether there was procedural impropriety and breach of natural justice — University of Malaya (Discipline of Students) Rules 1999 rr 53 & 54

The first, second, third, fourth and fifth applicants were charged under the University of Malaya (Discipline of Students) Rules 1999 ('the Rules') for the offences which were punishable under r 48 of the Rules. The disciplinary proceedings against all the applicants commenced on 9 December 2014 and ended with sentences passed by the disciplinary committee on the same day. It ought to be noted that all the applicants did not plead guilty to the charges. All the applicants appealed against the decision to the appeal committee but the appeal was dismissed. Consequently, the applicants filed leave for judicial review. The issues raised were, among others, in relation to legal representation by a lawyer, the unconstitutionality of the Rules, procedural non-compliance of rr 53 and 54 of the Rules, procedural impropriety and breach of natural justice.

Held, allowing the application with no order as to costs:

(1) There was no requirement and/or obligation on the part of the disciplinary committee, either under the University Colleges Act 1971 ('the Act') or the Rules to inform the applicants of their rights to be represented by a lawyer. Further, as a matter of law, there was no absolute right to legal representation in disciplinary proceeding cases. It was a discretionary power vested with the tribunal. In addition, the applicants had never raised the issue of right to representation of a lawyer during the disciplinary hearing (see paras 59 & 61).

(2) The applicants' allegation that the Rules were unconstitutional was devoid of any merit. The Rules were expressly made pursuant to the Act. In the present case, the applicants were not challenging the constitutionality of the Act. In any case, the applicants were prevented

from doing so as leave of the Federal Court had not been obtained pursuant to arts 4(3), (4) and 128 of the Federal Constitution (see paras 63 & 65).

(3) Under r 53 of the Rules, when the student did not plead guilty, firstly, the disciplinary committee must direct the complainant to produce witnesses and evidence and should accord the fundamental right to the applicants as the accused to cross examine the complainant's witnesses and to examine any documents supporting the case against the applicants (students). Whereas r 54 of the Rules stated that the disciplinary authority first must found that there was a case to answer, only then the student should be invited to give his evidence and/or call any witness or produce any document. In the present case, there was no iota of evidence to support the compliance of rr 53 and 54 of the Rules by the disciplinary committee on the conduct of the proceedings against the applicants. Thus, the whole proceedings adopted by the respondents was high-handed (see paras 68, 70–71 & 76).

(4) The proceedings only took one day and this showed that the entire proceedings were carried in hurry, thus justices hurried was justice denied. In addition, the first respondent in their affidavit in reply did not state the standard proof adopted in arriving at their decisions. This also a cause of procedural impropriety (see paras 77–78).

(5) When the first respondent failed to adhere to their own Rules, the proceedings caused injustice and/or prejudice to the applicants thus rendered breach of natural justice inter alia denied the applicants the right to be heard (see para 81).

[Bahasa Malaysia summary

Pemohon-pemohon pertama, kedua, ketiga, keempat dan kelima telah dituduh di bawah Kaedah-Kaedah Universiti Malaya (Tatatertib Pelajar-Pelajar) 1999 ('Kaedah tersebut') kerana kesalahan-kesalahan yang boleh dihukum di bawah k 48 Kaedah tersebut. Prosiding tatatertib terhadap semua pemohon telah bermula pada 9 Disember 2014 dan berakhir dengan hukuman dijatuhkan oleh jawatankuasa tatatertib pada hari yang sama. Ia perlu ditekankan bahawa kesemua pemohon tidak mengaku bersalah terhadap pertuduhan-pertuduhan tersebut. Semua pemohon telah merayu terhadap keputusan itu kepada jawatankuasa rayuan tetapi rayuan itu telah ditolak. Berikutan itu, pemohon-pemohon telah memfailkan kebenaran untuk semakan kehakiman. Isu-isu yang ditimbulkan adalah, antara lain, berkaitan perwakilan undang-undang oleh peguam, ketidakperlembagaan Kaedah tersebut, ketidakpatuhan prosedur kk 53 dan 54 Kaedah tersebut, ketidakpatuhan dan pelanggaran keadilan asasi.

Diputuskan, membenarkan permohonan tanpa perintah untuk kos:

(1) Tiada keperluan dan/atau obligasi di pihak jawatankuasa tatatertib, sama ada di bawah Akta Kolej-Kolej Universiti 1971 ('Akta tersebut') atau Kaedah tersebut untuk memberitahu pemohon-pemohon tentang hak-hak mereka untuk diwakili oleh seorang peguam. Selanjutnya, berhubung perkara undang-undang, tiada hak mutlak untuk mendapat perwakilan undang-undang dalam kes-kes prosiding tatatertib. Ia adalah kuasa budi bicara yang diberikan kepada tribunal. Tambahan pula, pemohon-pemohon tidak menimbulkan isu hak untuk diwakili peguam sepanjang perbicaraan tatatertib (lihat perenggan 59 & 61).

(2) Dakwaan pemohon-pemohon bahawa Kaedah tersebut tidak berperlembagaan tidak mempunyai apa-apa merit. Kaedah tersebut dengan jelas dibuat menurut Akta tersebut. Dalam kes ini, pemohon-pemohon tidak mencabar keperlembagaan Akta tersebut. Dalam apa keadaan, pemohon-pemohon dilarang daripada berbuat demikian kerana kebenaran Mahkamah Persekutuan tidak diperoleh menurut perkara-perkara 4(3), (4) dan 128 Perlembagaan Persekutuan (lihat perenggan 63 & 65).

(3) Di bawah k 53 Kaedah tersebut, apabila pelajar tidak mengaku bersalah, pertamanya, jawatankuasa tatatertib perlu mengarahkan pengadu mengemukakan saksi-saksi dan keterangan dan patut memberikan hak asasi kepada pemohon-pemohon sebagai tertuduh untuk memeriksaan balas saksi-saksi pengadu dan memeriksa apa-apa dokumen yang menyokong kes terhadap pemohon-pemohon (pelajar-pelajar). Manakala k 54 Kaedah tersebut menyatakan bahawa pihak berkuasa tatatertib terlebih dahulu perlu mendapati bahawa terdapat kes untuk dijawab, sebelum boleh mempelawa pelajar memberikan keterangannya dan/atau memanggil mana-mana saksi atau mengemukakan apa-apa dokumen. Dalam kes ini, tiada apa-apa keterangan untuk menyokong pematuhan kk 53 dan 54 Kaedah tersebut oleh jawatankuasa tatatertib berhubung pelaksanaan prosiding terhadap pemohon-pemohon tersebut. Oleh itu, keseluruhan prosiding yang diguna pakai oleh responden-responden sewenang-wenangnya (lihat perenggan 68, 70–71 & 76).

(4) Prosiding itu hanya mengambil satu hari dan ini menunjukkan bahawa keseluruhan prosiding dijalankan dengan tergesa-gesa, oleh itu keadilan yang tergesa-gesa itu suatu keadilan yang dinafikan. Tambahan pula, responden pertama dalam afidavit jawapan mereka tidak menyatakan piawai bukti yang diguna pakai apabila dalam membuat keputusan mereka. Ini juga adalah sebab ketidakpatuhan prosedur (lihat perenggan 77–78).

(5) Apabila responden pertama gagal mematuhi Kaedah mereka sendiri, prosiding tersebut menyebabkan ketidakadilan dan/atau prejudis kepada pemohon-pemohon dan dengan itu menyebabkan pelanggaran keadilan

asasi, antara lain, menafikan pemohon-pemohon hak untuk didengar (lihat perenggan 81).]

Notes

For cases on application for judicial review, see 1(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 329–407.

Cases referred to

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] 1 MLJ 169, PC (folld)

State Government of Negeri Sembilan & Ors v Muhammad Juzaili bin Mohd Khamis & Ors [2015] 6 MLJ 736, FC (refd)

Suraya bt Amdah v Ketua Setiausaha Kementerian Kesihatan Malaysia & Anor [2016] 7 MLJ 781, HC (refd)

Tan Sri Dato' Sri Panglima Hj Annuar bin Haji Musa v Persatuan Bolasepak Malaysia & Anor [2015] 2 MLJ 708, HC (refd)

Legislation referred to

Federal Constitution arts 4(3), (4), 5, 10(1)(a), (1)(b), (2)(a), (2)(b), 13, 128

Universities and University Colleges Act 1971 s 16C(1)

University of Malaya (Discipline of Students) Rules 1999 rr 3(a)(i), (a)(ii), (h), 9(1), (3), 10(1), 27, 48, 53, 53(1), (2), 54, 56, 59

Liew Sin Yew (Aston Paiva and Quratulain Atiqah with him) (Amerbon) for the plaintiffs.

Mubashir (Damian Kiethan with him) (Skrine) for the respondents.

Mohd Yazid J:

BACKGROUND

[1] On 19 October 2014, the the first applicant, Yang Dipertua Majlis Perwakilan Pelajar Universiti Malaya, through his facebook published an article titled 'Pidato Umum, 40 tahun dari Universiti Malaya ke Penjara' to be held at Dataran DTC Universiti Malaya, scheduled on 27 October 2014 involved Dato Sri Anwar Ibrahim.

[2] A meeting was held on 20 October 2014, in the presence of Timbalan Naib Canselor (Hal Ehwal Pelajar dan Alumni) together with Timbalan Dekan Fakulti Sains Sosial dan Sastera and the first applicant. After the said meeting, Timbalan Naib Canselor Hal Ehwal Pelajar dan Alumni contacted and advised the first applicant to cancel the activity. If approval was not granted, disciplinary action may be taken on the first applicant if he continues with the said activity.

[3] On 23 October 2014, the university issued a show cause letter to the first applicant and required him to reply to the show cause letter latest by noon 24 October 2014. The show cause letter was received by the first applicant on the same day.

[4] On 27 October 2014, the university issued a notice barring all students and traffic in and out of the university compound with the view to prevent participation in the said activity as the University Malaya view it as an illegal activity. Further, University Malaya never received any application from any parties concerning the said activity.

[5] On 27 October 2014, an emergency meeting was chaired by Naib Chancellor with the Director of Communication and Corporate Unit together with Director of Security for the purpose of handling the activity. As a result thereof, security was tighten on the traffic coming in and out of the University Malaya compound and staffs were allowed to leave earlier at 4pm. Followed by a notice prohibiting the staffs and the students from participating in the said activity.

[6] At 3.50pm, on the same date, there was a meeting held between Naib Chancellor and the first applicant at the office of Naib Chancellor lasting about 45 minutes, whereby the Naib Chancellor advised the the first applicant to call off the said activity.

[7] On the very day at 7pm, the entrance to the University Malaya well known as KL gate was closed and chained, only the PJ gate was opened for traffic. The students from the campus started moving towards the KL gate for the purpose of gathering for the said activity.

[8] As early as 8.25pm, on the same day, there were attempts by the participants of the gathering to enter into University Malaya compound through the KL gate, which was closed.

[9] At about 9pm, there were several students demanding to enter the campus and at the material time it is estimated about 100 participants had gathered outside the KL gate.

[10] At about 9pm, KL gate was forced open and there were about 1,000 participants had entered the University Malaya.

[11] At about 9.34pm, Dato' Seri Anwar Ibrahim, who was the main speaker arrived with his family outside the KL gate together with some of the PKR leaders. Datuk Seri Anwar together with the participants entered through the

KL gate headed to Dewan Tuanku Canselor. At 9.54pm, Datuk Seri Anwar arrived at Dewan Tuanku Canselor and delivered his speech. At about 10.38pm, Datuk Seri Anwar left the campus through the KL gate and around 11pm, all the participants disbursed without any incident.

[12] As a result of the said activity, the University Malaya took a disciplinary action against the applicants.

[13] Disciplinary proceeding was held on 9 December 2014 at Perdana 2 meeting room, Aras 2, Blok D, Kompleks Perdana Siswa Universiti Malaya. The student disciplinary committee was chaired by Professor Dr Zanariah Abdullah, Professor Khairulmaini Osman Salleh and Professor Dato Dr Mohd Supian Azirum.

Disciplinary proceedings against the first applicant

[14] There were eight amended charges against the first applicant under the University of Malaya (Discipline of Students) Rules 1999 related to the offences under rr 9(1), 9(3), 3(a)(i), 3(a)(ii), 3(h), 10(1) and 27 all of which are punishable under r 48 thereof.

[15] The disciplinary proceeding against the first applicant was commenced at 9.20am, on 9 December 2014. The first applicant was present with his representative, Professor Madya Dr Azmi Shahrom, lecturer from the Law Faculty of University Malaya.

[16] Proceedings started, with the first applicant not pleading guilty on all the eight amended charges upon being read to him.

[17] The disciplinary proceeding continued with the first applicant's evidence on the first amended charge. After the first applicant completed giving evidence, Nurul Syamimi Munira bt Muhammad, the first applicant's witness continued giving evidence.

[18] The proceeding then continued with the first applicant giving evidence on the second amended charge.

[19] It continued with the evidence of the first applicant on the third, fourth and fifth amended charges.

[20] The the first applicant then continued his evidence on the sixth amended charge, followed by his evidence on the seventh amended charge and lastly, his evidence on the eighth amended charge.

[21] After that the University Malaya called four witnesses. The first witness was En Mohd Sharif bin Pono (Security Officer UM) as main witness, En Shahrizal bin Mohd Isa (Assistant Security Officer UM) as second witness, En Zahratul Hisyam bin Abd Rahim (Security Officer UM) as third witness, and En Yusof bin Harun (Director of Security, UM).

[22] The disciplinary proceeding was adjourned at 12.30pm and continued at 9.53pm, and at the end of the proceedings the verdict was delivered, as follows:

(a) first amended charge — guilty;

(b) second amended charge — guilty;

(c) third amended charge — not guilty;

(d) fourth amended charge — not guilty;

(e) fifth amended charge — not guilty;

(f) sixth amended charge — guilty;

(g) seventh amended charge — guilty; and

(h) eighth amended charge — guilty.

[23] The disciplinary committee then proceeded to hear the first applicant's mitigation and instantly passed the sentencing.

Disciplinary proceedings against the second applicant

[24] There were three amended charges against the second applicant under the University of Malaya (Discipline of Students) Rules 1999 related to the offences under rr 9(3), 10(1) and 27 all of which are punishable under r 48 thereof.

[25] The disciplinary proceeding against the second applicant was conducted on 9 December 2014, at the same venue, comprising the same disciplinary committee. The second applicant was present with his representative, Dr Maimunna Hamid Marican, lecturer from the Art and Social Science Faculty of University Malaya.

[26] The disciplinary proceeding against the second applicant started at 2.20pm with upon second applicant pleaded not guilty on all the three amended charges being read to him.

[27] The disciplinary proceedings began with the evidence of the University Malaya witness, Tuan Hj Yusop bin Harun (Director of Security, UM).

[28] Thereafter, the second applicant was called to give evidence on the first, second and third amended charges.

[29] Soon after the second applicant's testimony the disciplinary committee found that the second applicant guilty on the first and second amended charges, whereas the second applicant was found not guilty on the third amended charge. The second applicant was allowed to mitigate.

[30] The disciplinary proceeding was adjourned at 3.10pm and continued at 9.39pm where the disciplinary committee passed the sentencing against the second applicant on the first and second amended charges.

Disciplinary proceedings against the third applicant

[31] There were two amended charges against the third applicant under the University of Malaya (Discipline of Students) Rules 1999 related to the offences under rr 9(3) and 27 all of which are punishable under r 48 thereof.

[32] The disciplinary proceeding against the third applicant was conducted on 9 December 2014, at the same venue, comprising the same disciplinary committee. The third applicant was present with his representative, Dr Aznijar Ahmad Yazid, lecturer from the Engineering Faculty of University Malaya.

[33] The disciplinary proceeding commenced at 5.32pm with the third applicant pleading not guilty on the two amended charges upon being read to him.

[34] The disciplinary proceedings began with the evidence of the third applicant followed by his written statement.

[35] The disciplinary proceeding was adjourned at 5.45pm and continued at 9.39pm on the same day. The disciplinary committee passed the verdict that the third applicant was guilty on the first amended charge and not guilty on the second amended charge. The third applicant was allowed to mitigate and then he was instantly sentenced.

Disciplinary proceedings against the fourth applicant

[36] There were two amended charges against the fourth applicant under the University of Malaya (Discipline of Students) Rules 1999 related to the offences under rr 9(3) and 27 all of which are punishable under r 48 thereof.

[37] The disciplinary proceeding against the fourth applicant was conducted on 9 December 2014, at the same venue, comprising the same disciplinary

committee. The fourth applicant was present with his representative, En Lee Min Lun, second year student, from Law Faculty of University Malaya.

[38] The disciplinary proceeding started at 3.20pm with the fourth applicant pleading not guilty on the two amended charges upon being read to him.

[39] The disciplinary proceedings began with the evidence of the University Malaya witness, Tuan Hj Yusop bin Harun (Director of Security, UM).

[40] Thereafter, the fourth applicant was called to give evidence.

[41] The disciplinary proceeding was adjourned at 4.15pm and recommenced at 9.24pm. The disciplinary committee straightaway found fourth applicant guilty on the first amended charge and not guilty on the second amended charge. Thereafter, instantly sentenced the fourth applicant.

Disciplinary proceedings against the fifth applicant

[42] There were two amended charges against the fifth applicant under the University of Malaya (Discipline of Students) Rules 1999 related to the offences under rr 9(3) and 27 all of which are punishable under r 48 thereof.

[43] The disciplinary proceeding against the fifth applicant was conducted on 9 December 2014, at the same venue, comprising the same disciplinary committee. The fifth applicant was present with his representative, Dr Lee Hwok Aun, Senior Lecturer of Economic and Administration, Faculty of Economic University Malaya.

[44] The disciplinary proceeding started at 4.30pm with the fifth applicant pleading not guilty on the two charges upon being read to him.

[45] The disciplinary proceedings began with the evidence of the University Malaya witness, Tuan Hj Yusop bin Harun (Director of Security, UM).

[46] Thereafter, the fifth applicant was called to give his evidence on the first and second amended charges.

[47] The disciplinary proceeding was adjourned at 5.10pm and recommenced at 9.24pm. The disciplinary committee found fifth applicant guilty on the first amended charge and not guilty on the second amended charge. The fifth applicant was allowed to mitigate and then he was sentenced.

[48] On the 19 December 2014, all the five applicants submitted their appeals to the appeals committee comprising of Ar Shaifuddin Ahmad, Datuk David Chua and Professor Datin Dr Norhanom Abd Wahab.

[49] The appeals were heard on 11 February 2015 and 12 February 2015, the appeals committee dismissed all the appeals and affirmed the verdict and the sentences.

[50] On 11 May 2015, the applicants filed leave for a judicial review.

THE FINDINGS OF THE COURT

Application to cross-examine the applicant

[51] Before the substantive application was heard, the respondent's counsel applied to court by way of encl 30 to cross-examine the applicants and the application was allowed.

[52] During the cross-examination proceedings, the applicants were referred to the relevant pages of the notes of evidence before the disciplinary committee purportedly to show that the facts which formed the basis of the judicial review proceeding were untrue.

[53] I observe that the applicants were reluctant or refused to given incriminating answers, such answers as, 'saya tidak mahu menjawab' or 'saya memilih untuk tidak menjawab' or 'I choose not to answer'.

[54] Notwithstanding that the answers given by the applicants during the cross-examination may be incriminating, nevertheless I find that the procedures adopted by the disciplinary committee in arriving at its decision is flawed and I will allude to my reasons below.

[55] I would emphasise that it is trite that judicial review refers to the process of supervisory jurisdiction of this court over proceedings and decisions of a tribunal (disciplinary committee as in this case), thus judicial review is directed not against the decision, but is confined to the examination of the decision-making process (refer to *Malaysian Civil Procedure 2013* at p 685).

[56] However, the respondent's counsel alleged that this application for judicial review is premised on the following grounds:

(a) legal requirement and/or obligation on the parts of the disciplinary committee to advice the applicants to get legal representation by a lawyer;

(b) the unconstitutional of the University of Malaya (Discipline of Students) Rules 1999;

(c) the amended charges were ultra virus of the University of Malaya (Discipline of Students) Rules 1999;

(d) the two internal meetings were not done in good faith;

(e) procedural non-compliance to rr 53, 54, 56 and 59 of the University of Malaya (Discipline of Students) Rules 1999;

(f) breach of natural justice; and

(g) injustice and prejudice suffered by the applicants.

[57] Although the applicants raised numerous issues but I find the main grounds are non-compliance to rr 53 and 54 of University of Malaya (Discipline of Students) Rules 1999, thus caused breach of rules of natural justice.

[58] On the first to fourth issues, I fully agree with the submission of the respondent's counsel that these are untenable grounds.

Legal representation by a lawyer

[59] I find there was no such requirement and/or obligation on the part of disciplinary committee, either under the Universities and University Colleges Act 1971 ('the UCA') or the University of Malaya (Discipline of Students) Rules 1999, to inform the applicants of their right to be represented by a lawyer. Further, as a matter of law, there is no absolute right to legal representation in disciplinary proceeding cases. It is a discretionary power vested with the tribunal. See case of *Tan Sri Dato' Sri Panglima Hj Annuar bin Haji Musa v Persatuan Bolasepak Malaysia & Anor* [2015] 2 MLJ 708.

[60] The above case established that the right of an accused person to a legal representation in a disciplinary case is not absolute right. Instead it is the disciplinary power of the tribunal hearing the case whether to grant or not to grant a legal representation.

[61] Furthermore, the applicants in this case had never raised the issue of right to a representation of a lawyer during the disciplinary hearing.

The unconstitutionality of the University of Malaya (Discipline of Students) Rules 1999

[62] The applicants alleged that the University of Malaya (Discipline of Students) Rules 1999 are unconstitutional for purportedly being in breach of

arts 5, 10(1)(a) and/or 10(2)(a), 10(1)(b) and/or 10(2)(b) and 13 of the Federal Constitution.

[63] I find the allegation of the applicants is devoid of merit based on the following reasons. Firstly the University of Malaya (Discipline of Students) Rules 1999 were expressly made pursuant to the UCA (its parent Act).

[64] Secondly, s 16C(1) of the UCA 1971 provides:

> *The Board shall have the power to make such disciplinary rules as it deems necessary or expedient to provide for the discipline of the students of the University; the disciplinary rules made under this subsection shall be published in the Gazette.* (Emphasis added.)

[65] Thirdly, I agreed with the respondents counsel's submission that the applicants are not challenging the constitutionality of UCA 1971. The applicants, thorough their counsel, had orally confirmed during the hearing of encl 33 on 9 March 2016 that they are not challenging the constitutionality of UCA 1971. In any case, the applicants are prevented from doing so as leave of the Federal Court has not been obtained pursuant to arts 4(3), 4(4) and 128 of the Federal Constitution. Indeed, in the recent Federal Court case of *State Government of Negeri Sembilan & Ors v Muhammad Juzaili bin Mohd Khamis & Ors* [2015] 6 MLJ 736:

> (a) It was held that 'the validity or constitutionality of the laws could not be questioned by way of collateral attack in a judicial review proceeding'. 'Such a challenge could only be made by way of the specific procedure as provided for in art 4(3) and (4) of the Federal Constitution'.

Procedural non-compliance of rr 53 and 54 of University of Malaya (Discipline of Students) Rules 1999

[66] Rule 53 provides:

> 53(1) If the student pleads that he is not guilty of the disciplinary offence or fails or refused to plead or does not admit the facts of the case, *The disciplinary authority shall examine any witness or any documents or other article in support of the case against the student; the student shall be invited to question* such witness and inspect such document or article, and the disciplinary authority may re-examine such witness
>
> (2) For the purpose of Sub rule (1), the witness shall be summoned to give evidence at the hearing by the Vice-Chancellor

[67] Rule 54 also provide:

> *54 Student's Evidence*
>
> After the evidence referred to in rule 53 has been received, and the disciplinary authority finds that there is a case to answer, the student shall be invited to give his evidence, call any witness or produce any document or other article in his

defence; the disciplinary authority may question the student or any his witnesses and inspect any such document or article, and the student may re-examine any of his witnesses.

[68] Rule 53 provides when a student does not plead guilty, firstly, the disciplinary committee must direct the complainant, in this case the University Malaya to produce its witnesses and evidence and shall accord the fundamental right to the applicants as the accused to cross examine the complainant's witnesses and to examine any documents supporting the case against the applicants (students).

[69] Further, r 53(2) stipulates that for the purpose of sub-r (1), the witness shall be summoned to give evidence at the hearing by the Vice-Chancellor. It is plain and obvious that any witnesses for the respondents being the complainant can only be summoned by the vice chancellor and there is no evidence before this court that r 53(2) has been complied with.

[70] Whereas, r 54 states that the disciplinary authority first must finds that there is a case to answer, only then the student shall be invited to give his evidence and or call any witness or produce any document.

[71] However, in this case there is no iota of evidence to support the compliance to rr 53 and 54 University of Malaya (Discipline of Students) Rules 1999 by the disciplinary committee on the conduct of the proceedings against the applicants. This ground alone undoubtedly establishes procedural non-compliance.

[72] Upon the procedure under r 53 is complied, the disciplinary committee should have decided whether there is a case to answer by the said applicants before calling the applicants to enter their defence. Only if there is a case to answer, the disciplinary proceedings can continue under r 54. This crucial steps were not followed thus blatant disregard to the University of Malaya (Discipline of Students) Rules 1999.

[73] To add salt to the injury, there is also no shred of evidence to show that the applicants were given the right to re-examine any of their witnesses. One must bear in mind that the disciplinary proceeding in this case is of quasi criminal in nature.

[74] The procedure envisaged under rr 53 and 54 are similar with the proceedings of criminal case where the prosecution has to establish a prima facie case against the accused at the end of the prosecution's case, and only if there is a prima facie case, the accused will be called to enter defence.

[75] The respondents deliberate non-compliance to its rules is corroborated by Dr Norhayati being one of the members of the disciplinary committee in her affidavit in reply affirmed on 13 August 2015, that '... Jawatankuasa sekarang ini bukan melihat tentang prosedur ... that is not important to us. What is important to us, it is the evidence that is brought forward based on this buku ... itu sahaja ...'.

[76] Based on the above finding and admission, it is plain that the procedure stipulated under rr 53 and 54 were not followed at all. To my mind the whole proceedings adopted by the respondents in this case is high-handed.

PROCEDURAL IMPROPRIETY

[77] Further, I find that the disciplinary proceedings started at 9.02am and lasted until 10pm followed by a decisions and sentencing. The proceedings only took one day and the time taken from the commencement of the disciplinary proceedings until the decision and sentencing was about just 12 hours bearing in mind it involved five applicants (accused) comprising 17 separate amended charges clearly shows that the entire proceedings was carried in hurry, thus justices hurried is justice denied.

[78] The burden of proof in the disciplinary action is beyond reasonable doubt and not on the balance of probability. I find the first respondent in their affidavit in reply did not state the standard proof adopted in arriving at their decisions. This also a cause of procedural impropriety.

[79] The respondent's counsel in his written submission stated that although the strict compliance of rr 53 and 54 were not complied with, it was merely a matter of procedure, which is directory in nature would not give an aggrieve person a right to redress in a court of law and the paramount important is that the principle of natural justice has been fully complied by the disciplinary committee. Furthermore, the disciplinary committee, being a domestic disciplinary proceedings was not subject to strict rule of law. The form or substance of the disciplinary committee proceedings must be looked as a whole before it could be said that there was a denial of natural justice.

[80] I disagreed with the respondent's submission on this issue. Firstly it lies in the respondents written submission that rr 53 and 54 were not complied with. Secondly, the first respondent's affidavit admitted that these rules were not important. On the other hand the University of Malaya (Discipline of Students) Rules 1999 were set up by the respondents but the respondents unilaterally elect not to comply.

BREACH OF NATURAL JUSTICE

[81] When the first respondent failed to adhere to their own rules, the proceedings caused injustice and or prejudice to the applicants thus renders breach of natural justice, inter alia, denied the applicants the right to be heard.

[82] In *Suraya bt Amdan v Ketua Setiausaha Kementerian Kesihatan Malaysia & Anor* [2016] 7 MLJ 781 at p 790 it was held:

> The case established the proposition that whenever in the exercise of a power a decision is taken by the administration which affects the legal rights of an individual to his detriment, the rules of natural justice must be observed by the decision maker. The fact that the statute is silent as regards procedures to be followed is immaterial. The case also held that the requirement to adhere to the dictates of natural justice arises by implication from the nature of the power conferred. The immediate result was that now bodies exercising quasi-judicial functions were bound to adhere to the rules of natural justice even where they were primarily exercising administrative functions.

[83] The above case has decided that even if a statute is silent as regards procedures to be followed is immaterial, what more in this case there is a codified written rules specifically governing the procedural requirement yet not followed, if this is not a breach of natural justice then what else could be?

[84] The principle of natural justice has been emphasis in *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169 at pp 172–173:

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of [Lord Loreburn] LC in *Board of Education v Rice* [1911] AC 179 182 27 TLR 378 down to the decision of Their Lordships' board in *University of Ceylon v Fernando* [1960] 1 WLR 223; [1960] 1 All ER 631.

[85] Following the principles alluded to in the above case, it is apparent in the present case that the applicants have the right to be heard and which is a real right, it carries with it a right to know the case which is made against applicants. The applicant must know what evidence has been given and what statements have been made affecting them; and then they must be given a fair opportunity to correct or contradict them. All of this was by passed and denied by the first respondent.

[86] For the foregoing grounds, it is my findings that the proceedings before

A the disciplinary committee had clearly breached rr 53 and 54 University of Malaya (Discipline of Students) Rules 1999 thus have caused procedural non-compliance which caused denial of fundamental rights of the applicant. Further, the refusal to accord the right to know whether there is case made out by the University Malaya (complainant) well before the applicants were called
B to put forward their case coupled with no right of cross examination and or re-examination undoubtedly amounts to breach of natural justice thus clearly warrants this court to allow this application with no order to the costs.

Application allowed with no order as to costs.

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Reported by Dzulqarnain Ab Fatar

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